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4 UNITED STATES DISTRICT COURT  
5 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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7 BRENT ALAN BRIGNER and  
8 JEANLOUISE HALLAL,

9 Plaintiffs,

10 v.

11 CLAYTON KEN WALKER, et al.,

12 Defendants.  
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Case No. 1:21-cv-00526-DAD-BAM

FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF ACTION FOR  
FAILURE TO OBEY A COURT ORDER,  
FAILURE PAY FILING FEE OR SUBMIT  
APPLICATIONS TO PROCEED *IN FORMA*  
*PAUPERIS* AND FAILURE TO PROSECUTE

(Doc. 2)

**FOURTEEN-DAY DEADLINE**

15 Plaintiffs Brent Alan Brigner and JeanLouise Hallal, proceeding *pro se*, filed the instant  
16 action on March 30, 2021. (Doc. 1.) Plaintiffs failed to pay the \$402.00 filing fee for this action  
17 or submit applications to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

18 On March 31, 2021, the Court issued an order directing Plaintiffs to submit completed and  
19 signed applications to proceed *in forma pauperis* or pay the \$402.00 filing fee for this action  
20 within thirty (30) days following service. (Doc. 2.) Plaintiffs were warned that failure to comply  
21 with the Court’s order would result in a recommendation for dismissal of this action. (*Id.*) More  
22 than thirty days have passed since service of the Court’s order and Plaintiffs have not filed  
23 applications to proceed *in forma pauperis* or paid the \$402.00 filing fee for this action.

24 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with  
25 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .  
26 within the inherent power of the Court.” District courts have the inherent power to control their  
27 dockets and “[i]n the exercise of that power they may impose sanctions including, where  
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1 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A  
2 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,  
3 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46  
4 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,  
5 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
6 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)  
7 (dismissal for failure to comply with court order).

8 In determining whether to dismiss an action, the Court must consider several factors: (1)  
9 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
10 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
11 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779  
12 F.2d 1421, 1423 (9th Cir. 1986); *see also In re Phenylpropanolamine (PPA) Products Liability*  
13 *Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (standards governing dismissal for failure to  
14 comply with court orders). These factors guide a court in deciding what to do and are not  
15 conditions that must be met in order for a court to take action. *Id.* (citation omitted).

16 A civil action may not proceed absent the submission of either the filing fee or an  
17 application to proceed in forma pauperis. 28 U.S.C. §§ 1914, 1915. As Plaintiffs have failed to  
18 pay the filing fee, file applications to proceed *in forma pauperis* or otherwise responded to the  
19 Court’s order, the Court is left with no alternative but to dismiss this action. This action can  
20 proceed no further without Plaintiffs’ cooperation and compliance with the Court’s order.  
21 Moreover, the matter cannot simply remain idle on the Court’s docket, unprosecuted, awaiting  
22 Plaintiffs’ compliance.

23 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED,  
24 without prejudice, for Plaintiffs’ failure to comply with the Court’s order, failure to pay the filing  
25 fee or submit applications to proceed *in forma pauperis* and failure to prosecute this action.

26 These Findings and Recommendations will be submitted to the United States District  
27 Judge assigned to the case, as required by 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after  
28 being served with these findings and recommendations, Plaintiffs may file written objections with

1 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
2 Recommendations.” Plaintiffs are advised that the failure to file objections within the specified  
3 time may result in the waiver of the “right to challenge the magistrate’s factual findings” on  
4 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923  
5 F.2d 1391, 1394 (9th Cir. 1991)).

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7 IT IS SO ORDERED.

8 Dated: May 12, 2021

/s/ Barbara A. McAuliffe  
9 UNITED STATES MAGISTRATE JUDGE  
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